

## EPA Asks D.C. Circuit to Reconsider CSAPR Vacatur

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On October 5, 2012, EPA filed a petition seeking a rehearing en banc of the D.C. Circuit's decision to vacate CSAPR on August 21, 2012. In its petition, EPA relied heavily on Judge Judith Rodgers' dissent, arguing that the D.C. Circuit lacked jurisdiction to determine that the States were not required to submit transport SIPs unless EPA had first defined their level of significant contribution. EPA also argued that the petitioners had waived arguments presented to the court by not first raising them during the public comment period.

In order for EPA's petition for a rehearing en banc to be granted, a judge must first call for a vote, and a majority of circuit judges in regular active service and who are not disqualified must vote in favor of granting EPA's petition for a rehearing en banc. Rehearings on banc are disfavored and rarely granted. It appears unlikely that the D.C. Circuit will grant EPA's request for a rehearing en banc because the case is specific to CSAPR and a rehearing is not necessary to maintain uniformity of the court's decisions. In addition, the judges may find that the proceeding does not involve a question of exceptional importance. A decision on EPA's petition is not expected until after the November election.

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